

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the)	WT Docket No. 02-55
800 MHz Band)	
)	
Consolidating the 800 and 900 MHz)	
Industrial/Land Transportation and Business)	
Pool Channels)	
)	
Amendment of Part of the Commission's Rules to)	ET Docket No. 00-258
Allocate Spectrum Below 3 GHz for Mobile and)	
Fixed Services to Support the Introduction of New)	
Advanced Wireless Services, Including Third)	
Generation Wireless Systems)	
)	
Amendment of Section 2.106 of the Commission's)	ET Docket No. 95-18
Rules to Allocate Spectrum at 2 GHz for Use by)	
the Mobile Satellite Service)	

COMMENTS AND REQUEST FOR EXPEDITED RELIEF

I. INTRODUCTION

New ICO Satellite Services G.P. ("ICO") submits these comments addressing the Sprint Nextel Corporation ("Sprint") status report filed on March 7, 2007, regarding the relocation of broadcast auxiliary service ("BAS") operations in the 1990-2025 MHz band ("2 GHz band").¹ The Commission should require that Sprint relocate BAS incumbents in the top 30 markets and all fixed BAS facilities ("top 30 and fixed BAS licensees") by no later than December 31, 2007. Sprint's expeditious completion of BAS relocation is essential to prevent any negative impact on

¹ See Sprint BAS Relocation Status Report (Mar. 7, 2007) ("Sprint Status Report").

2 GHz mobile satellite service (“MSS”) licensees’² plans for their scheduled launch and to the delivery of competitive broadband 2 GHz MSS to the public.

As part of 800 MHz re-banding, Sprint was assigned 10 MHz of nationwide spectrum in the 1910-1915 MHz and 1990-1995 MHz frequencies, conditioned upon completion of clearing BAS incumbents from the entire 2 GHz band. Despite its Commission-mandated obligation to clear BAS operations from certain markets by September 7, 2006, and from all remaining markets by September 7, 2007, Sprint discloses in its March 2007 status report that in over two years it has completed BAS relocation in only *two* of 214 markets. Sprint further acknowledges that it does not expect to complete BAS relocation in all markets until possibly September 7, 2009.

A year ago, Sprint notified the Commission that it will seek reimbursement of eligible BAS relocation costs from 2 GHz MSS licensees. Based on Sprint’s BAS relocation plan and its decision to seek reimbursement from 2 GHz MSS licensees, ICO determined that any efforts on its own to relocate BAS licensees involuntarily would be inefficient and cost-prohibitive. ICO accordingly has sought regular updates from Sprint, and has proceeded toward completion of construction and launch of its satellite by November 30, 2007. Sprint’s anticipated BAS relocation delay of up to 24 months, however, would negatively impact ICO’s ability to access 2 GHz MSS spectrum and certify its system operational as planned by December 31, 2007.

Accordingly, the Commission should require that Sprint relocate BAS incumbents in the top 30 markets and all fixed BAS facilities by no later than December 31, 2007, to ensure that ICO can certify its system operational as planned. As a result of Sprint’s BAS relocation delays, ICO will have spent more than \$500 million to construct, insure, launch, and operate its 2 GHz MSS system by December 2007 and yet may not obtain nationwide access to its assigned 2 GHz

² As used herein, “2 GHz MSS licensees” include entities holding either a license or a letter of intent authorization to provide 2 GHz MSS to the United States.

spectrum until September 2009. Sprint's 10 MHz of nationwide 1.9 GHz spectrum also will be unusable for new services until BAS relocation is completed. To ensure full access to cleared 2 GHz MSS spectrum at the earliest possible date, the Commission should consider whether the timing and terms of Sprint's current relocation and reimbursement scheme continue to serve the public interest given Sprint's expected two-year delay in completing BAS relocation. The Commission must adjust and enforce the existing BAS relocation requirements to mitigate the impact of Sprint's reported BAS relocation delays on the scheduled launch of ICO's 2 GHz MSS system later this year.

II. BACKGROUND

A. The Commission Adopted A Comprehensive BAS Relocation Plan Allowing Sprint A Reasonable Period Of Time To Relocate BAS Incumbents

As a condition of assigning 10 MHz of nationwide spectrum in the 1910-1915 MHz and 1990-1995 MHz bands to Sprint, the Commission adopted a comprehensive relocation plan requiring Sprint to relocate BAS operations in two stages.³ In the first stage, Sprint, by September 7, 2006, must relocate (i) BAS licensees in markets where it chooses to deploy service immediately, as well as in adjacent markets raising BAS inter-market coordination and interference problems (collectively, "Primary Markets"), and (ii) fixed BAS licensees in all markets.⁴ In the second stage, Sprint must relocate all remaining BAS licensees by September 7, 2007.⁵

The Commission required Sprint to submit by March 6, 2006, a copy of both Sprint's plan for relocating BAS licensees during stage one and a notification of its intent to seek

³ See *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, ¶¶ 251-63 (2004) ("800 MHz Order").

⁴ See *Improving Public Safety Communications in the 800 MHz Band*, 20 FCC Rcd 16015, ¶¶ 101, 104 (2005) ("800 MHz MO&O").

⁵ *Id.*

reimbursement of BAS relocation costs from 2 GHz MSS licensees.⁶ The Commission then allowed 2 GHz MSS licensees thirty days “to review the [Sprint] Nextel plan and identify to [Sprint] Nextel and the Commission which of the top thirty TV markets and fixed BAS operations, *if any*, they intend to invoke involuntary relocation.”⁷ The Commission further stated that “[i]f MSS licensees choose not to trigger involuntary relocation, Nextel will proceed under its plan to relocate BAS incumbents.”⁸ Thus, the Commission expressly noted that 2 GHz MSS licensees could choose not to relocate BAS licensees and allow Sprint to take the lead, subject to Sprint’s right to seek reimbursement from 2 GHz MSS licensees at a later date.

In April 2005, Sprint submitted its BAS relocation plan, committing to relocating BAS licensees in 71 Primary Markets (including nearly half of the top 30 markets) by September 7, 2006, and in all remaining markets by September 7, 2007.⁹ On March 7, 2006, Sprint submitted a notice of its intent to seek reimbursement of BAS relocation costs from 2 GHz MSS licensees, including ICO.¹⁰ Based upon Sprint’s relocation plan and Sprint’s April 2006 commitment to complete BAS relocation within the Commission’s deadline, ICO reasonably determined that Sprint likely would relocate most if not all BAS licensees before December 31, 2007.

⁶ 800 MHz Order ¶ 261. *See also* FCC Public Notice, *Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 Mhz Public Safety Interference Proceeding*, 19 FCC Rcd 21492 (2004). In adopting the Sprint-BAS relocation plan, the Commission also retained the previously existing MSS-BAS relocation plan requiring 2 GHz MSS licensees to relocate BAS licensees in the top 30 markets and fixed BAS licensees in all markets prior to commencing operations. The Commission did so in order to allow 2 GHz MSS licensees the “*option* of accelerating the clearing of those markets so that they could begin operations before [Sprint] Nextel has completed nationwide clearing.” (emphasis added) *Id.* ¶¶ 250, 257.

⁷ *Id.* ¶ 257 (emphasis added).

⁸ *Id.* (emphasis added).

⁹ *See* Nextel Communications, Inc., BAS Relocation Schedule and Implementation Plan, at 1-2 and Apps. A and B (April 6, 2005).

¹⁰ *See* Letter from Lawrence R. Krevor, Vice President, Government Affairs – Spectrum, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 02-55 (Mar. 7, 2006).

2 GHz MSS licensees cannot effectively or efficiently accelerate the BAS relocation process themselves at this late juncture. The practical ability of 2 GHz MSS licensees to relocate BAS incumbents themselves is not viable now that Sprint, despite its delays, has engaged in extensive BAS relocation negotiations, established specific contractual terms, and assumed responsibilities that would be difficult to pass on to another party. Although much work remains to be completed (*e.g.*, submitting and approving quote packages, submitting and fulfilling purchase orders, and installing comparable equipment), it would be inefficient, impractical, costly, and time-consuming for 2 GHz MSS licensees to duplicate the efforts previously made. Furthermore, BAS incumbents that have invested substantial time and resources in negotiating with Sprint very likely would be reluctant to expend additional resources to engage in a separate relocation process with 2 GHz MSS licensees. Under the circumstances, the Commission must intervene now to accelerate Sprint's BAS relocation efforts and address the impact of relocation delays on 2 GHz MSS licensees.

B. The ICO G1 Satellite Is Nearly Complete And Is Scheduled To Launch Later This Year

Relying on Sprint's initiation of broad-based negotiations with broadcasters pursuant to their joint relocation plan, ICO has focused its efforts on completing construction of its satellite, while continuing to monitor Sprint's BAS relocation efforts. By December 31, 2007, ICO will have expended more than \$500 million to construct, insure, launch and operate of its 2 GHz MSS system. The satellite construction phase is virtually complete with the satellite in final testing and analysis, and ICO to date has paid SS/L nearly all of the total satellite contract price (excluding in-orbit incentives). ICO expects to complete satellite construction and launch in accordance with its milestone schedule, and has contracted for a launch consistent with its November 2007 milestone launch date. However, because all top 30 and fixed BAS licensees

must be relocated before ICO is permitted to begin operations,¹¹ any significant delays in Sprint's BAS relocation efforts will negatively impact ICO's plans to certify its system operational by December 31, 2007.

III. SPRINT'S REPORTED BAS RELOCATION DELAYS WILL SEVERELY IMPACT COMMENCEMENT OF 2 GHz MSS IN-ORBIT TESTING AND OPERATIONS

A. Sprint's Lack of Progress On Completing BAS Relocation Threatens To Delay Completion Of BAS Relocation By Two Years

Sprint's March 2007 status report discloses that after nearly three years, Sprint has made little progress toward completing BAS relocation for virtually all of the markets required to be cleared. Specifically, the report indicates that Sprint will not relocate all BAS licensees by September 7, 2007, as required by the Commission and as promised in its BAS relocation plan.¹² In fact, as of March 2007, Sprint has cleared only two of 214 markets.¹³ Moreover, Sprint offers no estimate of how many or which specific markets it expects to clear by the September 7, 2007, final deadline. Rather, Sprint concedes that it will not complete BAS relocation by September 7, 2007, and states that it will require an extension of up to 24 additional months – nearly doubling the period currently allowed by the Commission.¹⁴

ICO has requested that Sprint provide updates on the progress made on BAS relocation. These updates, however have not included detailed information regarding matters such as the resources required to effect relocation or expended in relocating specific markets. This lack of

¹¹ As noted above, the top 30 and fixed BAS licensees must be cleared before MSS operations can begin in the band.

¹² See Sprint Status Report at 6.

¹³ Sprint reports that eight of the 214 markets have no BAS licensees and therefore do not require any relocation. *Id.* at 6 n.4.

¹⁴ *Id.* at 8, 25.

information has made it difficult for ICO to actively participate in relocation in any meaningful way or to estimate its potential reimbursement costs.

B. 2 GHz MSS Licensees' In-Orbit Testing And Operations Will Likely Be Unacceptably Delayed Unless Sprint Achieves Significant Progress Toward Completing BAS Relocation

Absent Commission intervention, the slow pace of Sprint's BAS relocation efforts threatens to substantially delay the commencement of operation of the first 2 GHz MSS system and the public's access to truly competitive satellite services.¹⁵ Even if 2 GHz MSS licensees were to secure temporary authorizations to conduct in-orbit testing or other initial operations prior to Sprint's completion of BAS relocation, these operations would be severely limited in both geographic and technical scope. This geographical limitation is particularly harmful to 2 GHz MSS operators whose satellite systems are specifically designed to cover the entire United States. 2 GHz MSS licensees would need to coordinate with BAS incumbents in order to mitigate the potential for interference between 2 GHz MSS and BAS operations. As a result, any 2 GHz MSS testing and other initial operations likely would be confined to a few small markets that may not be ideal or suitable for testing and planning purposes. Coordination with BAS operations also could require that 2 GHz MSS licensees limit the technical capability of their mobile earth terminals, thus severely restricting the product testing and development necessary to support commercial launch of service.

Unfortunately, it would be impractical for ICO to undertake separate efforts at this point given that Sprint has concluded relocation agreements, one of the initial steps in the relocation process, with a number of BAS licensees. The current commitment of Sprint and broadcaster resources to their joint relocation plans would make it nearly impossible for a 2 GHz MSS

¹⁵ See *id.* at 6. As noted above, the top 30 and fixed BAS licensees must be cleared before MSS operations can begin in the band; ICO is scheduled to commence 2 GHz MSS operations by December 31, 2007.

entrant to now secure separate relocation arrangements with BAS incumbents on a more aggressive time frame. Consequently, MSS entry is threatened with delay to the extent that Sprint is not diligent in timely completing BAS relocation.

IV. THE COMMISSION SHOULD TAKE IMMEDIATE ACTION TO EXPEDITE BAS RELOCATION AND ENSURE PROMPT DEPLOYMENT OF 2 GHz MSS TO THE PUBLIC

To mitigate the impact of Sprint's BAS relocation delays on ICO's scheduled launch of service, the Commission should require that Sprint relocate BAS incumbents in the top 30 markets and all fixed BAS facilities by no later than December 31, 2007. When the Commission first adopted the two-stage Sprint-BAS relocation plan, it anticipated that Sprint would complete relocation of all BAS licensees by May 2007, well before 2 GHz MSS licensees were required by their milestone requirements to certify their systems as operational.¹⁶ However, because Sprint has conceded that it may not complete BAS relocation in all markets until September 7, 2009 – nearly two years after the scheduled launch of the first 2 GHz MSS system – Sprint at a minimum must be required to relocate the top 30 and fixed BAS licensees by December 31, 2007 to facilitate 2 GHz MSS licensees plans for their scheduled testing of their satellites and launch of service.

Furthermore, the Commission should consider whether the timing and terms of its current relocation and reimbursement scheme continue to serve the public interest given Sprint's expected two-year delay in completing BAS relocation. Sprint's BAS relocation delays may delay 2 GHz MSS licensees' ability to fully utilize their assigned 2 GHz spectrum until September 2009. Because BAS incumbents currently use the 1990-2025 MHz spectrum in two channel blocks, 1990-2008 MHz and 2008-2025 MHz, new entrants have limited access to any portion of 2 GHz spectrum until Sprint completes 2 GHz BAS relocation. Accordingly, the

¹⁶ See *800 MHz Order* ¶ 270.

Commission must adjust and enforce the existing BAS relocation requirements in order to mitigate the impact of Sprint's reported BAS relocation delays on the scheduled launch of the first 2 GHz MSS system later this year.

The Commission's approval of the joint Sprint/broadcaster relocation plan was premised upon Sprint's timely compliance with its BAS relocation obligations and upon the benefits that 2 GHz MSS licensees apparently would receive from Sprint's relocation efforts. Now simply postponing all deadlines under that plan would be grossly inequitable if Sprint's failure to complete BAS relocation in a timely manner causes a delay in ICO's launch of service and hinders ICO's ability to maximize the revenues that could be used to pay for BAS relocation costs.

V. CONCLUSION

Based upon the foregoing, ICO urges the Commission to address issues raised by Sprint's BAS relocation delays and to modify and enforce the BAS relocation requirements so as to expedite use of 2 GHz MSS spectrum for service to the public.

Respectfully submitted,

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April 13, 2007

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2007, a copy of the foregoing COMMENTS AND REQUEST FOR EXPEDITED RELIEF was served by U.S. Mail, postage prepaid, upon the following:

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